

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*,  
Debtors.

Chapter 11 Case No.  
08-13555 (JMP)  
(Jointly Administered)

In re

LEHMAN BROTHERS INC.,  
Debtor.

Case No. 08-01420 (JMP)

**ADDENDUM 5 TO POST-TRIAL  
MEMORANDUM OF BARCLAYS CAPITAL INC.**

**DEMONSTRATIVE TIMELINES**

**BOIES, SCHILLER & FLEXNER LLP**

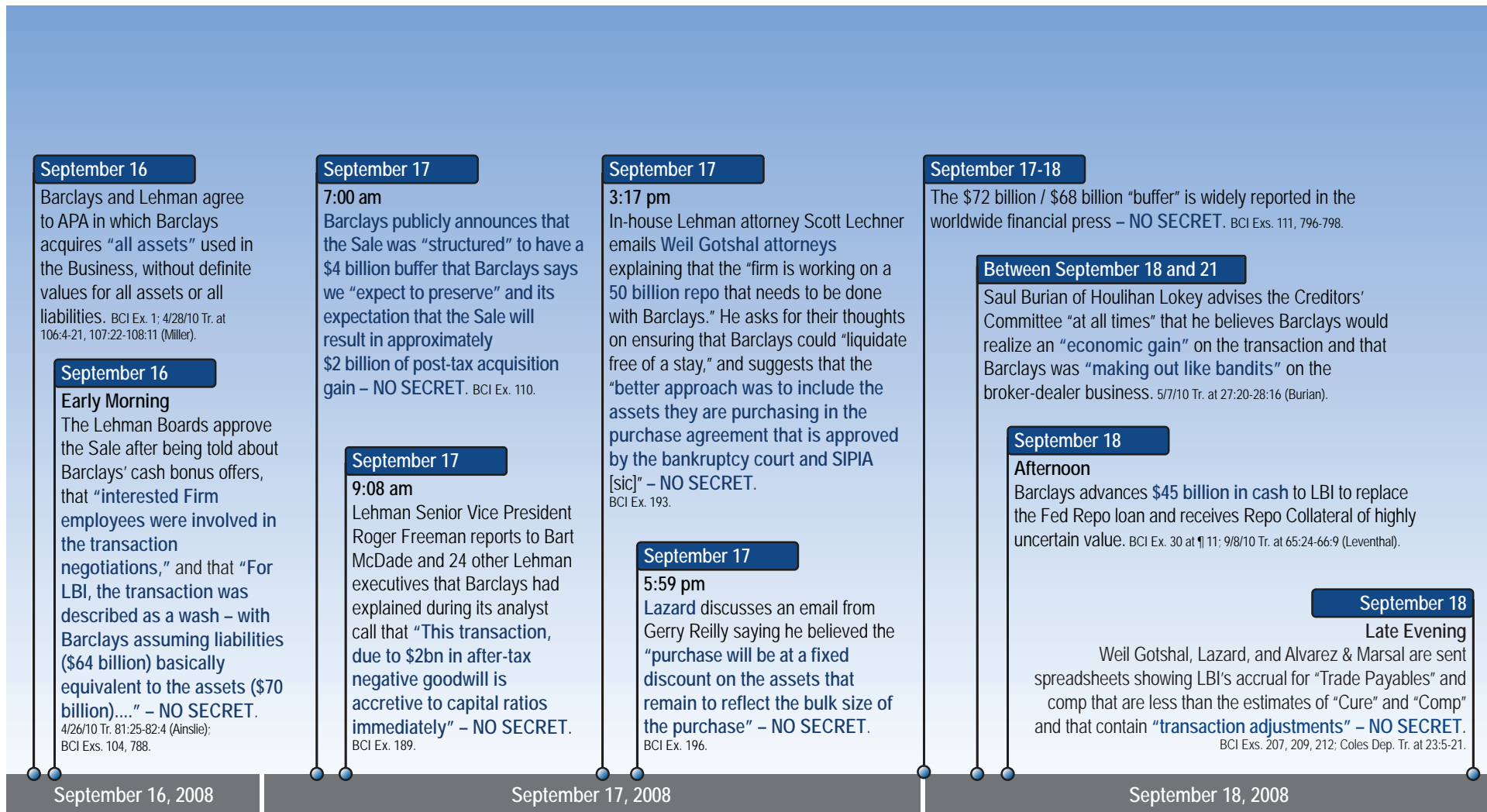
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*Attorneys for Barclays Capital Inc.*

November 22, 2010

Tab	Title
1.	Timeline Showing That Movants Have Known The Information About Which They Now Complain Since The Time Of The Sale, But Waited A Year To Raise It With The Court.
2.	Timeline Showing Significant Events Confirming Barclays' Entitlement To The ETD Margin Deposits.
3.	Timeline Showing The Drafting History Of The Clarification Letter That Confirms Barclays' Entitlement To The ETD Margin Deposits.
4.	Timeline Showing The Drafting History Of The Clarification Letter That Confirms Barclays' Entitlement To The Clearance Box Assets.
5.	Timeline Showing That The Trustee Knowingly Authorized The Post-Closing Transfer To Barclays Of Non-Customer Clearance Box Assets Held In LBI's DTCC Accounts.
6.	Timeline Showing The Drafting History That Confirms Barclays' Entitlement To \$769 Million In Securities From The LBI Rule 15c3 Account, Or Substantially Equivalent Securities From Outside The Accounts.

**Timeline Showing That Movants Have Known  
The Information About Which They Now  
Complain Since The Time Of The Sale, But  
Waited A Year To Raise It With The Court.**



September 19

Late Evening September 18  
to Early Morning

Weil Gotshal, along with Cleary, posts three lists of Closing Date Contracts on the LBHI Epiq website. These initial lists reflect cure amounts for the Closing Date Contracts of approximately **\$180 million – NO SECRET**. BCI Exs. 12-15.

September 19

JPMorgan shuts down Lehman's access to its securities accounts. Kirk Dep. Tr. at 72:13-14, 73:25-74:13.

September 19

Morning

In response to questions about the "transaction adjustments" balance sheet, Lehman gives Lori Fife of Weil a **revised cure estimate of \$1 billion – NO SECRET**. 4/28/10 Tr. at 207:4-15, 270:13-22, 286:11-15 (Kelly).

September 19

Bart McDade knows that Lehman and Barclays have estimated the market value of the Repo Collateral to be **\$5 billion** less than the marked value, and agrees to the transaction – **NO SECRET**. 4/26/10 Tr. at 186:25-187:7, 187:19-24, 224:7-21 (McDade).

September 19

11:05 am

Luc Despins of Milbank circulates an email to Committee advisers at Milbank and Houlihan showing Goldman Sachs's analysis that the Sale **"allows Barclays to cherry pick owned inventory, investment and other assets at a windfall discount to FMV (the discount is at least several billion dollars)" – NO SECRET**. BCI Ex. 219.

September 19

Late Morning to Early Afternoon

Lehman's Jim Seery discusses the changes in the transaction with the Committee's financial advisors. He describes the **"5B" repo haircut** and certain haircuts that correspond to the "Fed Facility Haircut Analysis" (i.e., "1 to 2%" for Agencies) – **NO SECRET**. 5/4/10 Tr. at 33:11-34:16, 42:12-43:14 (Seery); BCI Exs. 143a, 650.

September 19

Lehman independently analyzes the Repo Collateral actually delivered to Barclays as reflected on the spreadsheet generated earlier in the day and determines that much of the collateral is difficult to value and, if Lehman tried to sell the assets, **"bids might be down 20 percent."** Kirk Dep. Tr. at 95:14-96:16.

September 19

12:56 pm

Paolo Tonucci sends Barclays a spreadsheet of the Repo Collateral that had actually been transferred to Barclays. He notes that it contains Lehman marks, which are less than the BONY marks for the collateral – proving that Lehman had the BONY marks – **NO SECRET**. BCI Ex. 895.

September 19

1:38 pm

Lazard's Barry Ridings writes to his colleague that he has "No time to speak on anything else" because the **"Leh deal totally restructured"** and he is **"Talking to creditors."** BCI Ex. 387.

September 19

Afternoon

While with Weil Gotshal, Bart McDade agrees in a call with Alex Kirk that the Clearance Box Assets and the 15c3 Assets are to be transferred to Barclays. McDade and Weil are aware that these assets are in the deal – **NO SECRET**. Kirk Dep. Tr. at 104:24-105:19, 110:23-111:19; 4/26/10 Tr. at 199:21-200:6 (McDade).

September 19, 2008

**September 20, Shortly After Midnight**

The Sale Order is issued; the Order specifically approves the "Purchase Agreement" (defined as both the APA and a "letter agreement" "that may be subsequently modified or amended or clarified") and contemplates the transfer of OCC margin to Barclays. BCI Ex. 16.

**September 19**

**4:11 pm**

In an email exchange before the Sale Hearing, Lehman's Jim Seery asks Alex Kirk about the Clearance Box Assets estimated by Lehman at \$1.9 billion. BCI Ex. 678.

**September 19**

Shortly before the Sale Hearing begins, Michael Klein meets with Weil Gotshal, Cleary, Lehman, and Lazard and reviews the changes in the transaction, including the identification of the Clearance Box Assets and 15c3 assets – **NO SECRET**. 8/31/10 Tr. at 45:15-47:22 (Lewkow).

**September 19**

**4:36 pm**

The Sale Hearing begins. BCI Ex. 49 (9/19/08 Tr.) at 1.

**September 19**

**4:43 pm**

The Sale Hearing recesses so that the "**major changes**" and "**a lot of moving parts**" in the transaction can be explained to those in attendance. BCI Ex. 49 (9/19/08 Tr.) at 43:11-22, 45:19.

**Sept. 19**

**5:40 pm**

During the recess, Weil Gotshal explains the changes in the transaction. Emails indicate that creditors are "sqwaking [sic]" in response to the identification of the \$1.9 billion of Clearance Box Assets. BCI Ex. 225.

**September 19**

**5:41 pm**

The Sale Hearing reconvenes. BCI Ex. 49 (9/19/08 Tr.) at 45:19.

**September 19**

**5:55 pm**

In an email exchange with Jim Seery, Alex Kirk confirms that he believes the market value of the Repo Collateral is \$45.5 billion. BCI Ex. 679.

**September 19-20**

During the Sale Hearing, the Debtor's counsel explains –

- Rejecting the transaction would be "**detrimental to the national interest.**" BCI Ex. 49 (9/19/08 Tr.) at 61:9-13.
- The "**melting ice cube**" has "**already half melted.**" BCI Ex. 49 (9/19/08 Tr.) at 244:17-18.
- In the alternative, "**there will be very little to distribute to creditors, if anything.**" BCI Ex. 49 (9/19/08 Tr.) at 244:20-24.
- "**LBI is unable to deliver to Barclays the assets that were originally intended under the APA.**" BCI Ex. 49 (9/19/08 Tr.) at 63:23-64:8.

**September 19-22**

13 lawyers at the Trustee's firm bill over \$150,000 for work described as "review of **continuing revisions** to APA, Clarification Letter and numerous rounds of negotiations with Weil, Cleary, and other professionals re **changing terms to sale** and timetable for closing and consultations with HHR, SIPC and SEC teams re same," "round-the-clock negotiations with Lehman, Barclays, SIPC and regulators on sale issues with **review of Clarification Letter** and accompanying sale documents," work to "monitor and participate in sale discussions and review of final sale documents," and the like. BCI Ex. 40 at pp. 26-27, 30, 34.

**September 20**

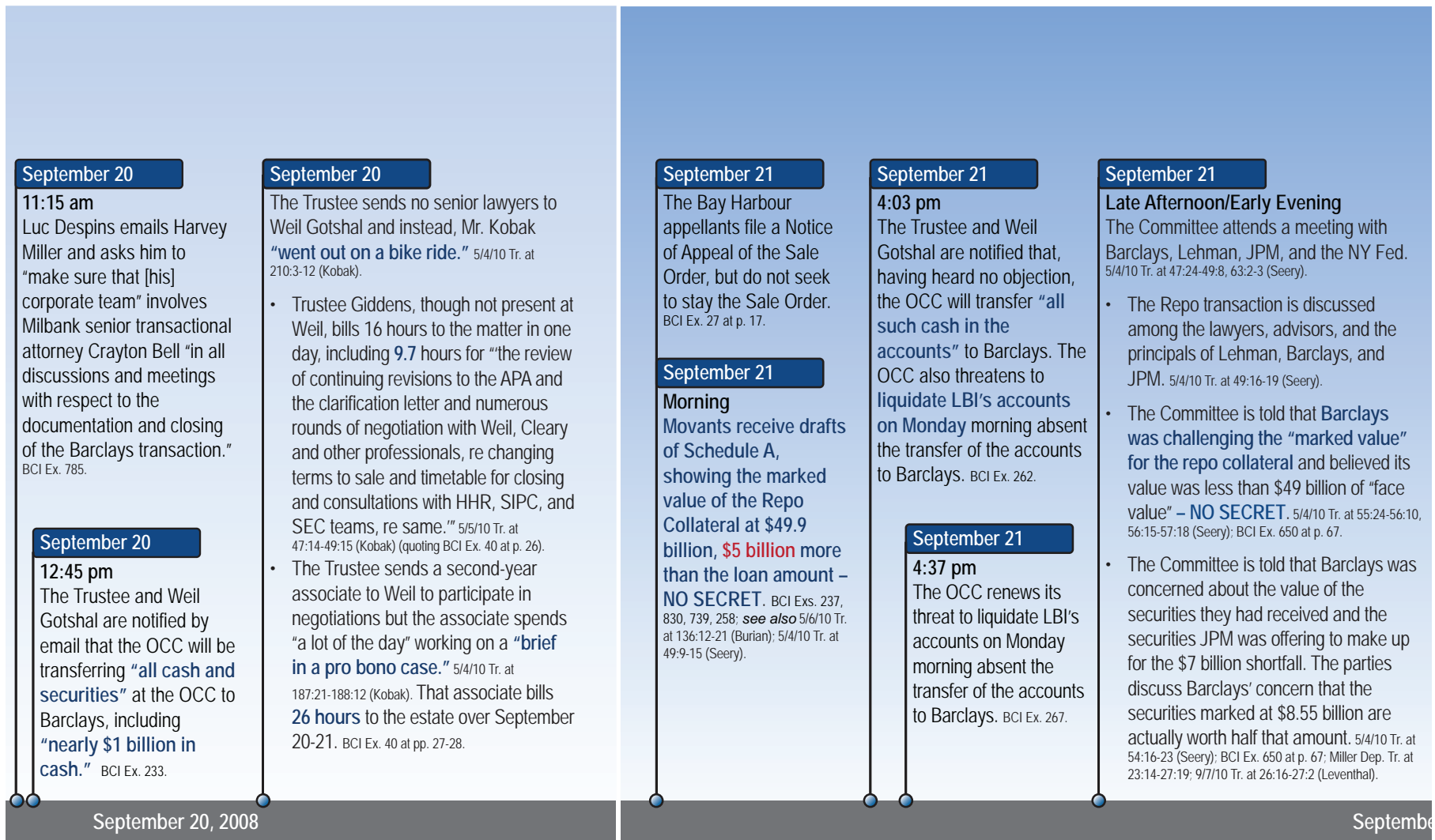
**Sometime prior to 2:32 am**

The Trustee signs the TAA authorizing the transfer of "**all margin deposits**" at the OCC to Barclays with knowledge that the OCC margin includes LBI proprietary assets. The Trustee also signs the Collateral Account Agreement authorizing the transfer of "**all rights in securities, cash, and other property**" at the OCC to Barclays. BCI Ex. 231

**September 20**

**Morning**

Meetings at Weil Gotshal to work on the Clarification Letter. Miller Dep. Tr. at 22:17-23:9, 29:5-25, 97:21-98:7.



#### September 21

Following the large meeting with all of the principals, the Fed, and JPM, Committee advisors meet with Jim Seery to "review the particulars of the transaction." 5/4/10 Tr. at 59:21-60:2 (Seery).

- The Committee probes "the difference between the forty-five billion advanced and the fifty, roughly, face value of those assets ... and their concern was that **five billion dollar difference**." They also discuss that there is no better deal available for Lehman – **NO SECRET**. 5/4/10 Tr. at 60:8-62:8, 63:9-64:10 (Seery).
- The Committee and Mr. Seery discuss, throughout the evening and early morning hours before the Closing, how the parties came up with the \$45.5 billion versus the \$49 billion "of face." The Committee knows it has the right to go to Court if they object **"but they didn't object."** 5/4/10 Tr. at 66:7-24 (Seery).

#### September 21

##### Late Night to Early Morning September 22

- As documented by the Committee advisors, Lehman informs them that the marks shown on Schedule A were "out of date" and that **the parties "had agreed to a \$5 billion discount as the appropriate 'mark to market' adjustment for the securities."** BCI Exs. 813a, 814.
- The Committee believes that the Lehman executives, **"in cahoots** with their soon to be bosses/partners at barcap," **"negotiated a sweetheart deal"** to transfer to Barclays securities **"worth \$5 billion more** than both the lehman and barcap guys said they were worth...." BCI Ex. 814.
- Weil Gotshal holds a meeting attended by representatives of Barclays and the Creditors' Committee in which Weil decides not to return to Court for further approval of the Clarification Letter because, in Weil's view, it **"did not change the deal that was presented to the Court."** Miller Dep. Tr. at 48:15-49:15; 4/28/10 Tr. at 117:13-21 (Miller).
- The agreement with the DTC is explained during a telephonic meeting between Weil Gotshal, the Trustee's lawyers, representatives of the Creditors' Committee, Barclays' lawyers, and the DTC. 8/24/10 Tr. at 132:10-134:1 (Rosen).

#### September 21-22

After reviewing the transcript of Barclays' September 17 analyst call, Committee members note that Barclays had **"described how great the Lehman buy is"** and was expecting **"\$2bn goodwill after tax,"** and comment that it is "Interesting to understand what a bargain Barclays thinks it has." BCI Exs. 285, 291.

#### September 22-30

Weil Gotshal confirms multiple times that **"any property" securing ETDs are Purchased Assets.** BCI Exs. 807, 320.

#### September 22

Before the Closing, the Committee raises its concerns with Weil Gotshal over the **\$5 billion "mismatch"** issue, an **"overall theme"** over the pre-Closing weekend. O'Donnell Dep. Tr. at 154:25-156:14, 157:4-24, 164:25-165:6.

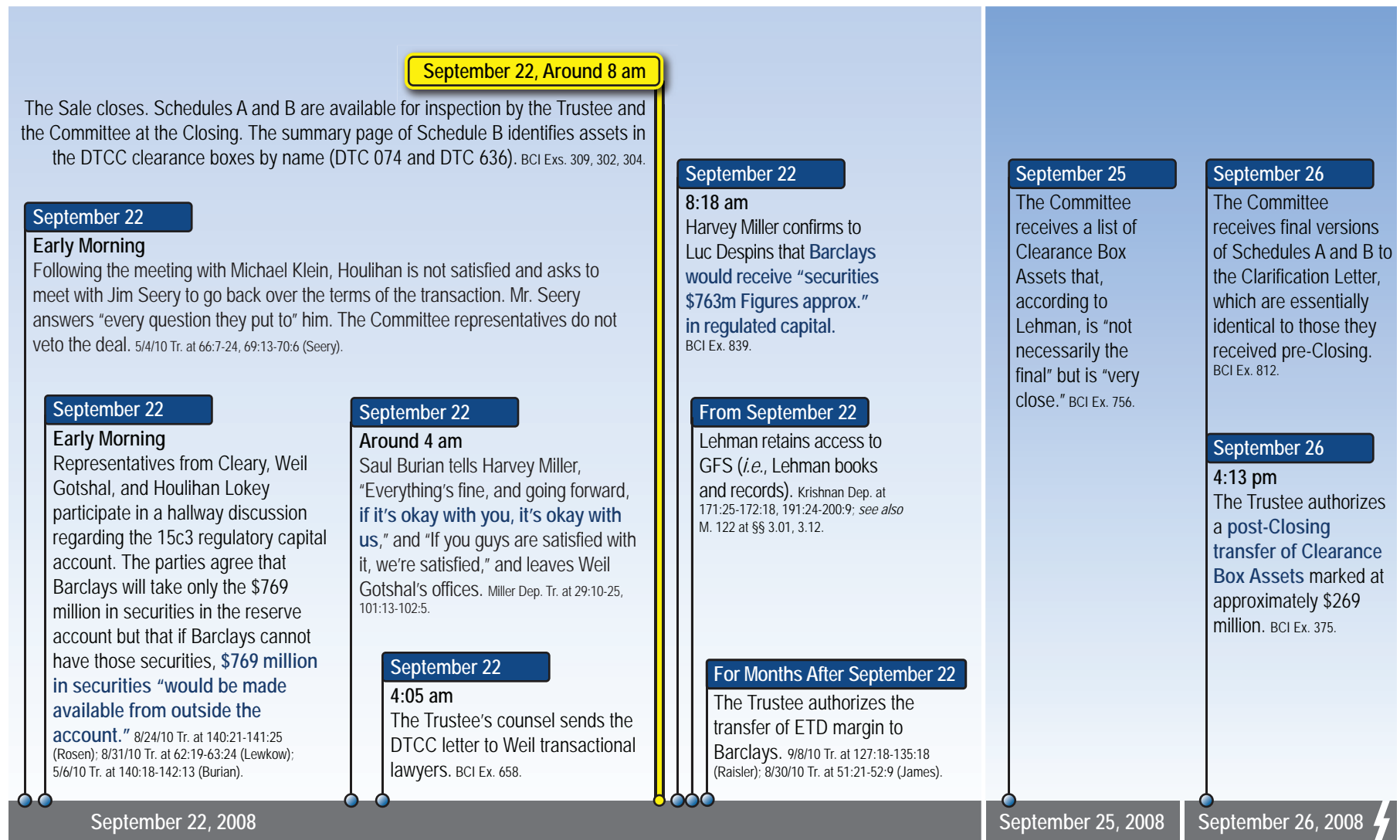
#### September 22

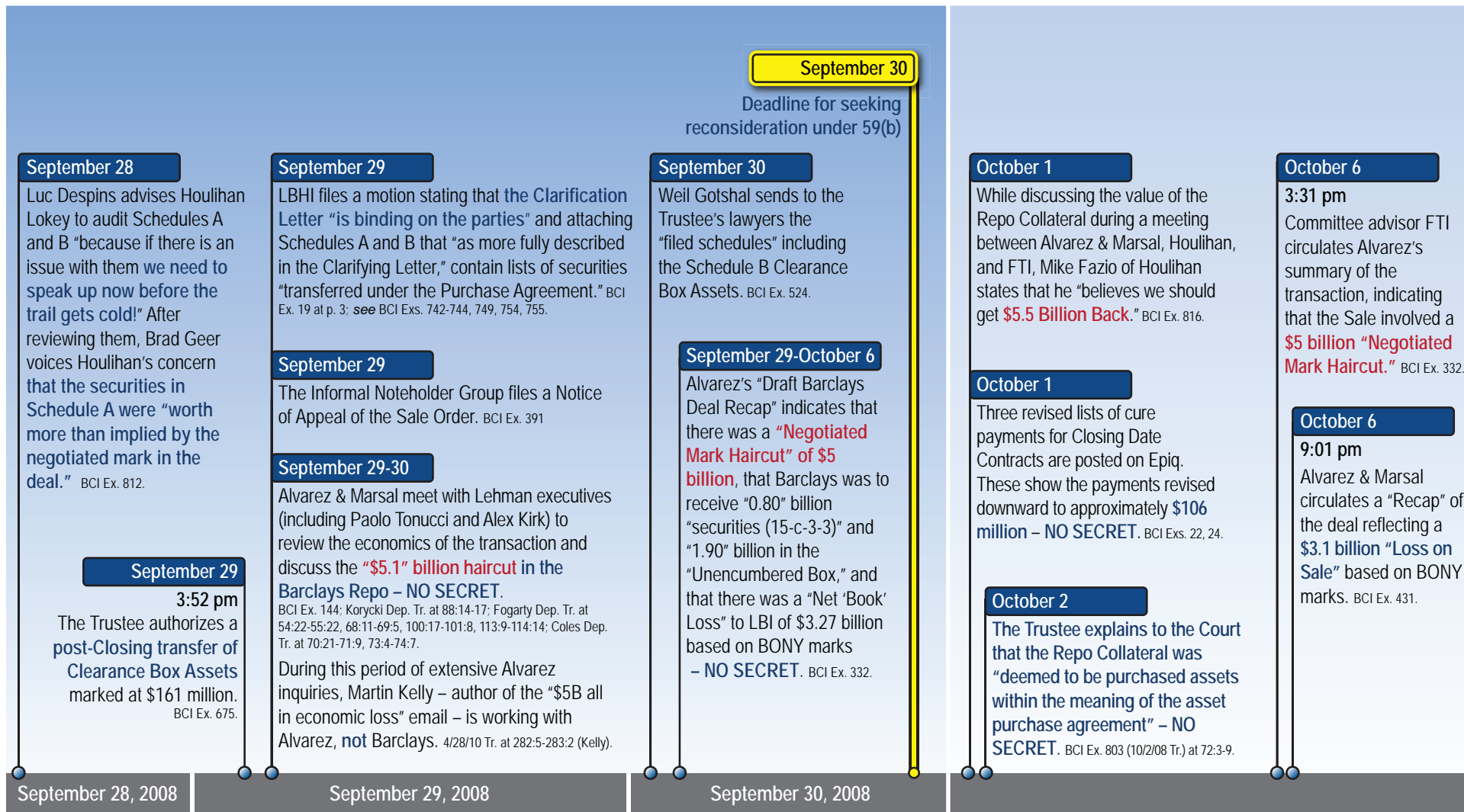
##### After Midnight

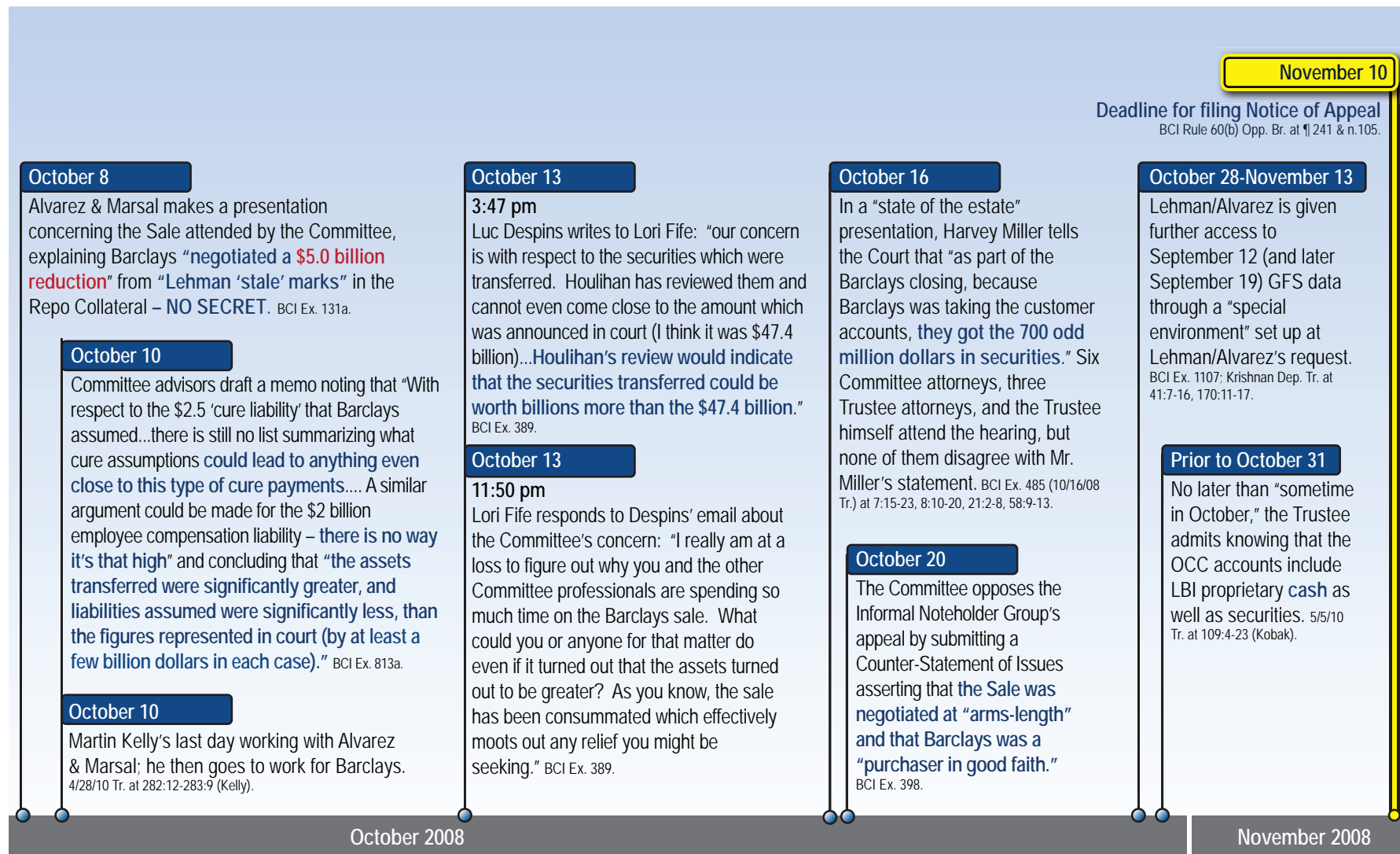
Michael Klein meets with Mr. Burian, Mr. Fazio, Mr. Miller, and other lawyers from Weil Gotshal.

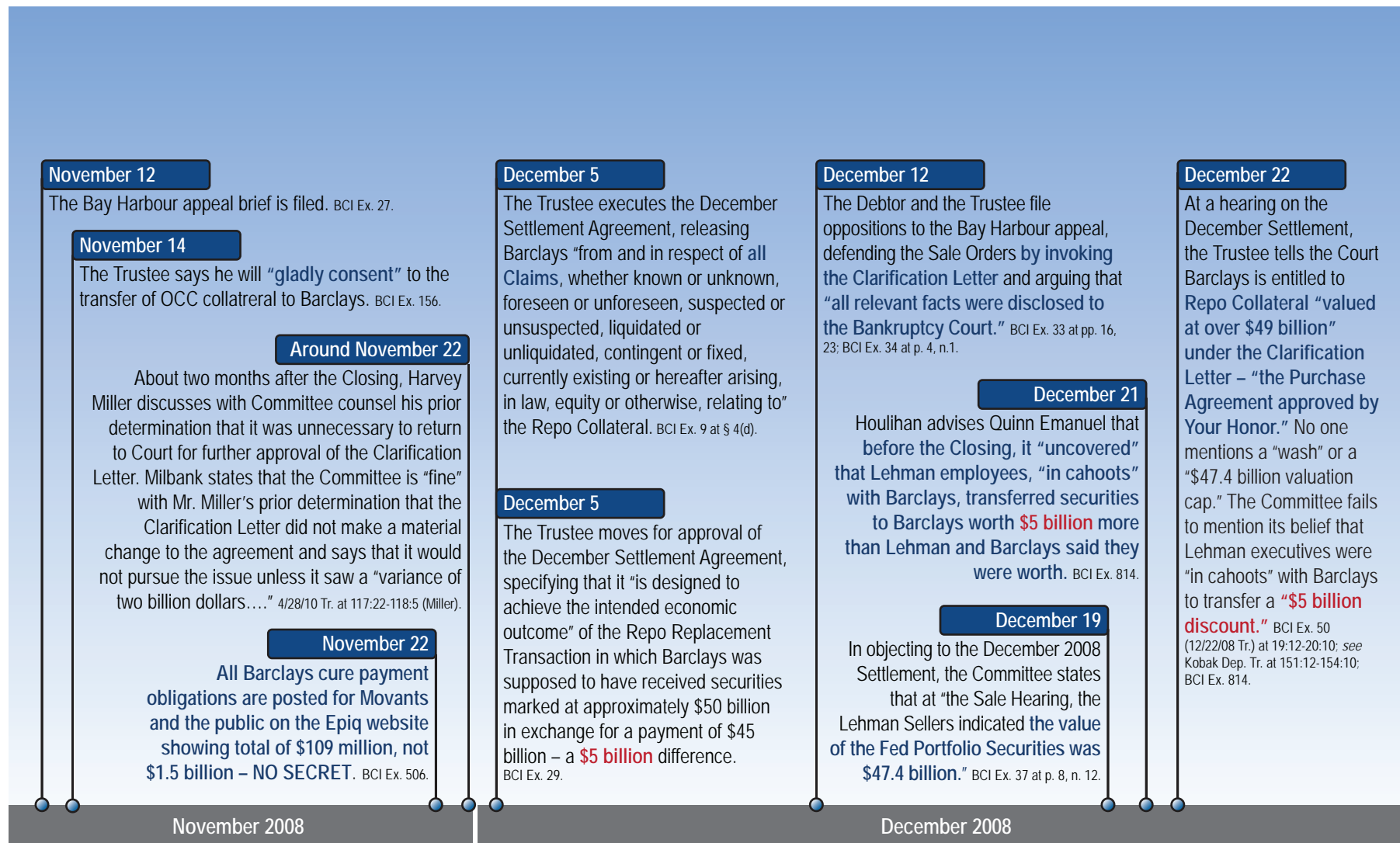
- Mr. Klein is brought in to explain the "flow of funds" relating to the Fed Repo, issues with JPMorgan, and why the transaction was being held up. 8/27/10 Tr. at 60:3-25 (Klein); M. 410.
- During the meeting, Mr. Klein tells the Committee representatives that the \$49.9 billion for the Repo Collateral did not reflect market value. Mr. Klein tells them that Barclays believed the assets were worth much less and ascribes a value of \$44-45 billion to the Repo Collateral, **\$5 billion** less than the marks – **NO SECRET**. 5/6/10 Tr. at 152:23-153:19 (Burian); 8/27/10 Tr. at 234:16-23 (Klein); M. 410.

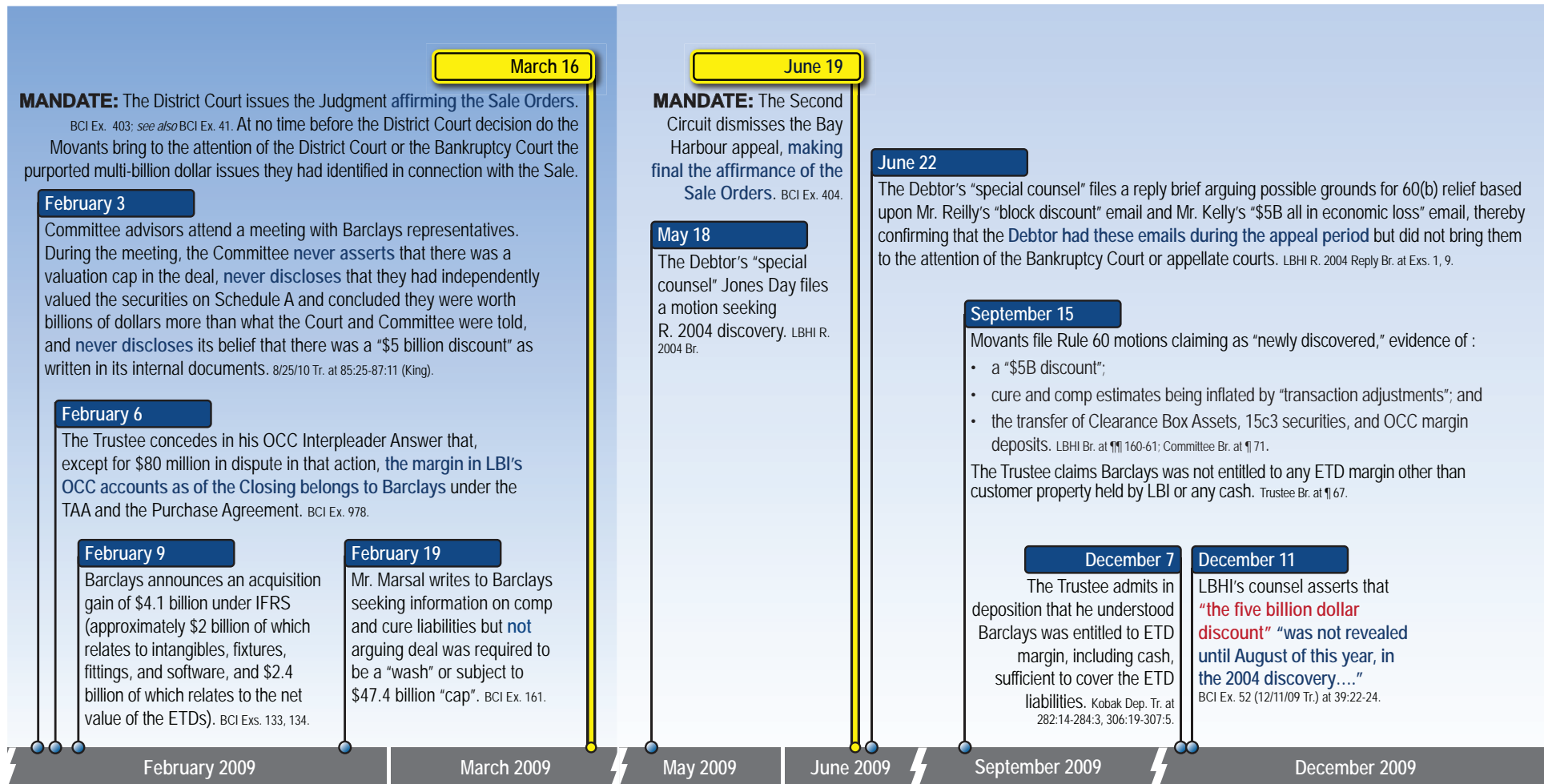












**Timeline Showing Significant Events  
Confirming Barclays' Entitlement To  
The ETD Margin Deposits.**

#### September 16-19

LBI deposits \$1.2 billion in cash in OCC accounts to meet margin calls. BCI Ex. 646.

#### September 18

10:50 am  
LBI and Barclays personnel discuss and arrange for the transfer to Barclays of all "House Margin and Collateral" and all collateral in customer futures accounts. BCI Ex. 217.

#### September 18

The CME closes out LBI's proprietary ETDS. BCI Ex. 49 (9/19/08 Tr.) at 61:16-19.

#### September 19

The ICE Futures Exchange closes out LBI's proprietary ETDS. 9/8/2010 Tr. at 104:10-25 (Raisler).

#### September 19

Between 10 am and Noon  
The OCC refuses to release computed excess margin to Barclays. BCI Ex. 970 at ¶¶ 73.

#### September 19

Prior to 1:30 pm  
The OCC draws down on letters of credit to increase the amount of accessible LBI margin assets. BCI Ex. 978 at ¶¶ 41-42.

#### September 19

Barclays learns for the first time about the VIX futures position at the OCC. 9/8/2010 Tr. at 124:3-16 (Raisler).

#### September 19

2:13 pm  
The OCC requests a Sale Order provision preserving its lien over "all securities, cash, collateral and other property" at the OCC once transferred to Barclays. BCI Ex. 220.

#### September 20

Shortly After Midnight  
The Court issues the Sale Order contemplating the transfer of OCC margin to Barclays. BCI Ex. 16.

#### September 20

Sometime prior to 2:32 am  
The Trustee signs the TAA authorizing the transfer of "all margin deposits" at the OCC to Barclays with knowledge that the OCC margin includes LBI proprietary assets. BCI Ex. 231; 5/5/10 Tr. at 106:9-107:22 (Kobak).

#### September 20

Sometime prior to 2:32 am  
The Trustee signs Collateral Account Agreement authorizing the transfer of "all rights in securities, cash, and other property" at the OCC to Barclays. BCI Ex. 231

#### September 20

11:12 pm  
Barclays proposes language in the Clarification Letter to carve "margin" out of the cash exclusion. BCI Ex. 249.

#### September 20

12:45 pm  
The Trustee and Weil Gotshal are notified by email that the OCC will be transferring "all cash and securities" at OCC to Barclays, including "nearly \$1 billion in cash." BCI Ex. 233.

#### September 21

4:03 pm  
The Trustee and Weil Gotshal are notified by email that, having heard no objection, OCC will transfer "all such cash in the accounts" to Barclays. BCI Ex. 262.

#### September 21

4:03 pm  
The OCC threatens to liquidate LBI's accounts on Monday morning absent the transfer of the accounts to Barclays. BCI Ex. 262.

#### September 21

4:37 pm  
The OCC renews its threat to liquidate LBI's accounts on Monday morning absent the transfer of the accounts to Barclays. BCI Ex. 267.

#### September 21

Just Prior to 6:11 pm  
Barclays learns for the first time about open futures positions at two foreign exchanges. M. 730.

#### September 21

7:54 pm  
Weil Gotshal retains the Clarification Letter provision carving 15c3-3 cash and margin out of the cash exclusion. BCI Ex. 270.

#### September 22

About 3-4 am  
The hallway discussion concerning 15c3-3 cash occurs. 4/29/10 Tr. at 81:23-83:16 (Miller).

#### September 22

4:36am  
Weil Gotshal deletes the Clarification Letter provision carving 15c3-3 cash and margin out of the cash exclusion. BCI Ex. 280.

#### September 22

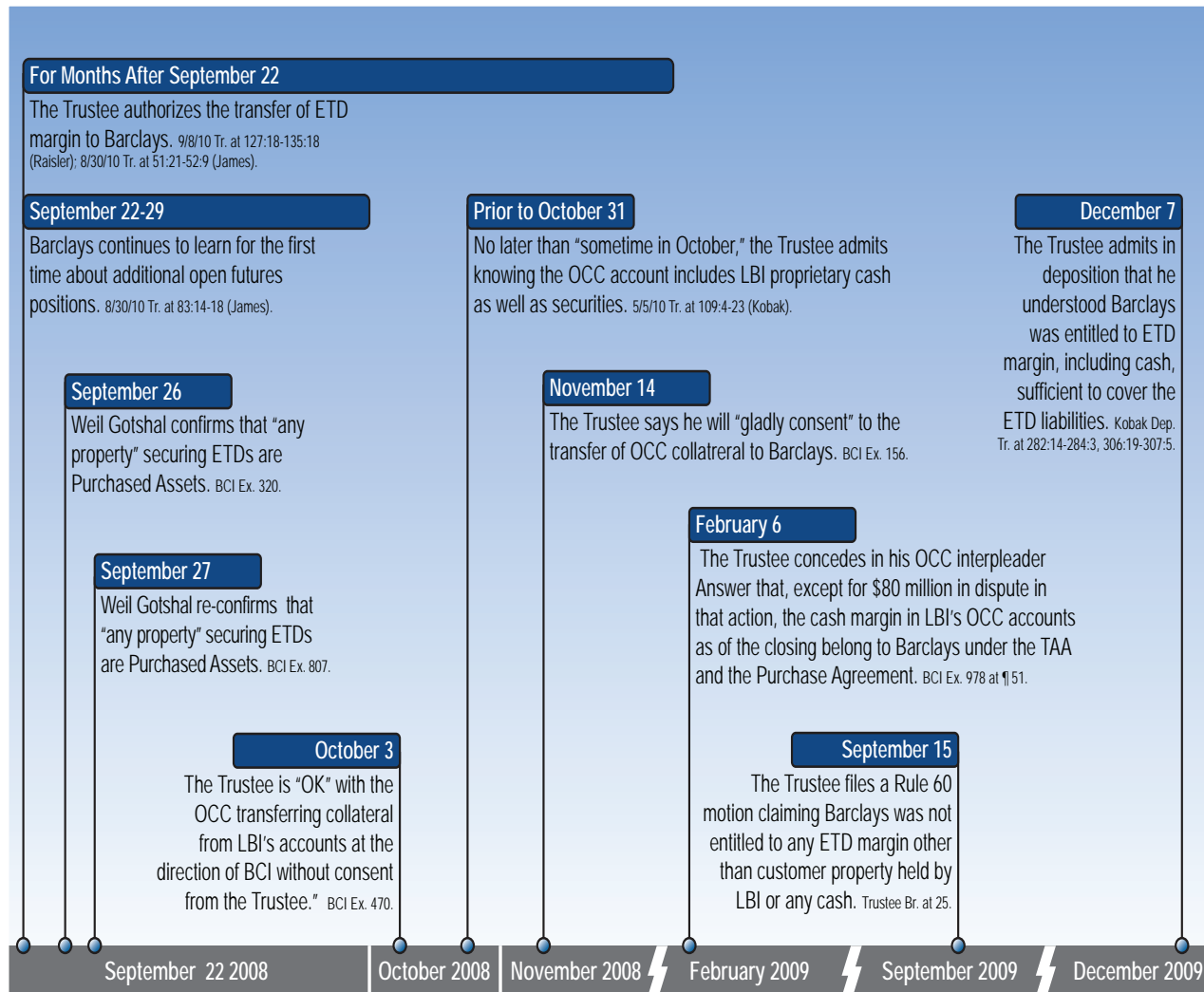
Between 6 am and 8 am  
Barclays' counsel proposes the insertion of the ETD parenthetical into the Clarification Letter. 8/24/10 Tr. at 122:25-124:4 (Rosen).

#### September 22

Between 6:30 and 8 am  
Weil Gotshal inserts the ETD parenthetical into the Clarification Letter. 8/24/10 Tr. at 120:8-25 (Rosen); BCI Ex. 5.

September 16-19 2008

September 20-22 2008





**Timeline Showing The Drafting History Of The  
Clarification Letter That Confirms Barclays'  
Entitlement To The ETD Margin Deposits.**

# The Timing Of The Parties' Revisions To The Clarification Letter Show That ETD Margin Was Always Understood – By All Parties – To Be A Purchased Asset

Sep. 22

**6:00-8:00 a.m.:** Lawyers for Barclays raise the fact that margin has been inadvertently cut out by Lehman's proposed edits, and provide a handwritten markup containing the ETD parenthetical to Weil Gotshal. Weil Gotshal adds the ETD parenthetical to the Clarification Letter. 8/24/10 Tr. at 185:1-23 (Rosen).

Sep. 22

**4:36 a.m.:** In implementing the agreed-upon exclusion of 15c3 cash, Weil Gotshal deletes the entire provision proposed by Barclays.

Sep. 21

**7:54 p.m.:** Lawyers for LBHI circulate Barclays' 11:12 p.m. draft to SIPC and the Trustee. Cover e-mail states: "The portions highlighted in yellow concern the points which depend on the resolution of the current discussions. Otherwise, we reviewed the text of the letter...**I do not expect the letter to change.**" BCI Ex. 270.

ETD Margin was not one of the issues under discussion. 8/24/10 Tr. at 179:3-20, 199:18 – 200:14 (Rosen).

Sep. 22

**3:00-4:00 a.m.:** Barclays and Lehman lawyers discuss 15c3-3 cash and agree to remove it from the deal. Miller Dep. Tr. at 30:6-17; 4/28/10 Tr. at 81:24 – 83:16 (Miller).

Sep. 22

**1:00-2:00 a.m.:** Trustee's representative signs the Clarification Letter. 5/5/10 Tr. at 93:11-14 (Kobak).

Sep. 20

**11:12 p.m.:** Lawyers for Barclays circulate a draft Clarification Letter that provides that **"Excluded Assets' shall not include... cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries maintained...by or on behalf of any clearing agency or clearing organization to collateralize, guaranty, secure (whether as margin, guaranty fund deposit or in any other form) the obligations of LBI or any other person."** BCI Ex. 249.

Sep. 20, 2008

Sep. 21, 2008

Sep. 22, 2008

**Timeline Showing The Drafting History Of The  
Clarification Letter That Confirms Barclays'  
Entitlement To The Clearance Box Assets.**

# After Barclays And The DTCC Reached An Agreement, The Parties Revised The Clarification Letter To Reflect The Agreement And To Broaden The Language Providing That All LBI Assets In Its DTC Clearance Boxes Are “Purchased Assets”

## Late Night – Early Morning

The agreement with the DTCC is explained during a telephonic meeting between Weil, the Trustee's lawyers, representatives of the Creditors' Committee, Barclays' lawyers, and the DTCC.

8/24/10 Tr. at 132:10 – 134:1 (Rosen).

7:54 p.m.

Weil Gotshal draft Clarification Letter: “such securities and other assets specified on Schedule [B] as Purchaser may, within 60 days after the Closing elect to receive...are Purchased Assets....” BCI Ex. 270.

## Before Midnight

Oral agreement on basic terms of the DTCC Letter reached.  
Rosen Dep. Tr. at 153:11-14.

4:05 a.m.

Trustee's counsel sends DTCC Letter to Weil Gotshal. BCI Ex. 658.

4:36 a.m.

Weil Gotshal draft Section 1(d) provides that Barclays shall “pay at the Closing \$250 million of the Cash Amount to the Depository Trust Clearance Corporation (‘DTC’) for deposit as collateral against LBI’s obligations to the DTC (including its affiliated clearing organizations). **Such collateral account shall be maintained** in accordance with such agreement as LBI and DTC may agree upon.”

Weil Gotshal changes definition of Purchased Assets to read: “Purchased Assets shall include...such securities and other assets **held in LBI’s ‘074 clearance box’ at DTC** (as defined below)....” BCI Ex. 505.

5:22 a.m.

Weil Gotshal revises draft Section 1(d) references to “the agreement among LBI, Purchaser and DTC entered into in connection with the Closing.”

Weil Gotshal broadens definition of Purchased Assets: “Purchased Assets shall include...such securities and other assets **held in LBI’s ‘clearance boxes’** ....” BCI Ex. 642.

~ 8:30 a.m.

Final Clarification Letter defines Purchased Assets: **“Purchased Assets shall include...such securities and other assets held in LBI’s ‘clearance boxes’ as of the time of the Closing, which at the close of business on September 21, 2008 were as specified on Schedule B previously delivered by Seller and accepted by Purchaser....”** BCI Ex. 5.

Sep. 21, 2008

Sep. 22, 2008

**Timeline Showing That The Trustee Knowingly  
Authorized The Post-Closing Transfer To  
Barclays Of Non-Customer Clearance Box  
Assets Held In LBI's DTCC Accounts.**

# The Trustee Knowingly Authorized The Post-Closing Transfer Of Non-Customer Clearance Box Assets To Barclays

## Sep. 24

Trustee's counsel meets with Alastair Blackwell to **discuss the transfer of non-customer assets to Barclays**. Frelinghuysen Dep. Tr. at 67:20 – 68:22; BCI Ex. 40 at pp. 46-47.

## Sep. 25, 5:40 p.m.

Trustee's counsel sends Blackwell the form of certification required for the transfer of non-customer assets to Barclays: "I represent and confirm to you that the inventory and accounts listed in the schedule attached as Exhibit A to this letter are **assets of Lehman Brothers Inc., which were sold to Barclays Capital Inc. pursuant to the Asset Purchase Agreement dated as of September 16, 2008, as amended.**" BCI Ex. 514; Frelinghuysen Dep. Tr. at 73:20 – 74:19.

## Sep. 29, 3:20 p.m.

Neal Ullman sends Trustee's counsel a request for the transfer of \$161 million of non-customer LBI assets. BCI Ex. 825; 8/23/10 Tr. at 162:1-6 (Ullman).

## Sep. 29, 3:31 p.m.

Trustee's counsel asks Ullman to "confirm that the attachments to the email below represent **assets of Lehman Brothers Inc. that were sold to Barclays Capital Inc. pursuant to the Asset Purchase Agreement dated as of September 16, 2008.**" BCI Ex. 517, BCI Ex. 825; 8/23/10 Tr. at 162:7-19 (Ullman).

## Sep. 29, 3:50 p.m.

Ullman confirms; two minutes later trustee's counsel authorizes the transfer. BCI Exs. 517, 675; 8/23/10 Tr. at 162:20-23, 163:5-25 (Ullman).

Sep. 24, 2008

Sep. 25, 2008

Sep. 29, 2008

**Timeline Showing The Drafting History That  
Confirms Barclays' Entitlement To \$769 Million  
In Securities From The LBI Rule 15c3  
Account, Or Substantially Equivalent  
Securities From Outside The Accounts.**

# Extrinsic Evidence Confirms That The “Or” Clause Was Added To The Clarification Letter At The Same Time As The “Applicable Law” Clause In Response To Barclays’ Demand That It Maintain An **Unconditional** Right To \$769 Million In Securities

## Friday, Sep. 19

Barclays asks Lehman to identify Purchased Assets still available for transfer and of sufficient value to persuade Barclays to go forward with the transaction. 5/7/10 Tr. at 206:13 – 207:5, 207:19 – 208:12 (Ricci); 4/30/10 Tr. at 186:12 – 187:1 (Hughes); 8/27/10 Tr. at 50:14 – 52:21 (Klein).

- Lehman identifies the assets held in the 15c3-3 Reserve Account as Purchased Assets that previously had not been specifically identified to Barclays. 8/31/10 Tr. at 46:3 – 47:17 (Lewkow); 4/26/10 Tr. at 201:16-19 (McDade), 4/29/10 Tr. at 44:24 – 45:2 (Lowitt); Kirk Dep. Tr. at 105:4-19.

## Sunday, Sep. 21

**7:54 p.m.:** Drafts of the Clarification Letter provide that “Purchaser shall receive... (ii) cash, cash equivalents, bank deposits or similar cash items maintained (A) by or on behalf of LBI pursuant to Rule 15c3-3 of the Securities Exchange Act of 1934 or otherwise.” BCI Ex. 270 at p. 4.

## Late Sunday, Sep. 21, or Early Monday, Sep. 22

“Hallway” conversation with representatives of Weil and Barclays. 8/31/10 Tr. at 61:2-8 (Lewkow).

## Monday, Sep. 22

**4:36 a.m.:** The next draft of the Clarification Letter includes both the phrase “to the extent permitted by applicable law” **and** the phrase “or securities of substantially the same nature.” M. 447 at p. 5.

- This language satisfies Barclays’ concerns expressed in the hallway conversation. 8/24/10 Tr. at 141:12-25 (Rosen).

## Later on Monday

The Clarification Letter is signed in its final form.

Sep. 19, 2008

Sep. 21, 2008

Sep. 22, 2008